

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

CHARLES ELLIS SHIRLEY

§

VS.

§

CIVIL ACTION NO. 6:10cv353

OFFICER MCINTOSH

§

ORDER OF DISMISSAL

Plaintiff Charles Ellis Shirley, a prisoner confined at the Henderson County Jail, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the civil rights complaint should be dismissed pursuant to 28 U.S.C. § 1915A(b)(1). The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit. The Plaintiff complained that the Defendant interfered with his right of access to court, but he failed to show that he was harmed by the Defendant's actions. He does not have a basis for a meritorious access to court claim in the absence of harm. *Christopher v. Harbury*, 536 U.S. 403, 415 (5th Cir. 2002); *Lewis v. Casey*, 518 U.S. 343, 351 (1996). The Plaintiff's objections did not address the recommendation to dismiss the case due to an absence of harm; instead, he only

reiterated his claim that the Defendant interfered with his right of access to court. The objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the civil rights complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). It is further

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

The present lawsuit is just one of nine lawsuits filed in this Court by the Plaintiff over the years. The Plaintiff is hereby informed that the decision dismissing this cause of action as frivolous counts as a strike for purposes of § 1915(g). He is cautioned that once he accumulates three strikes, he may not proceed IFP either in any civil action or in any appeal of a civil action which is filed while he is incarcerated or detained in any facility, unless he is under imminent danger of serious physical injury.

So ORDERED and SIGNED this 26th day of August, 2010.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE